

HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for)
Certification for) Docket No. 92-AFC-2C
SEPCO)
_____)

CALIFORNIA ENERGY COMMISSION
FIRST FLOOR HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

MONDAY, JANUARY 24, 2000

10:10 A.M.

Reported by:
Debi Baker
Contract No. 170-99-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBER PRESENT

Robert Laurie, Presiding Member

David Rohy, Vice Chairman
Associate Member

STAFF PRESENT

Gary Fay, Hearing Officer

Bob Eller, Adviser to Vice Chairman Rohy

David Mundstock, Senior Staff Counsel

Robert B. Haussler

Nancy Tronaas

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ALSO PRESENT

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1 P R O C E E D I N G S

2 10:10 a.m.

3 PRESIDING MEMBER LAURIE: Ladies and
4 gentlemen, I apologize for my tardiness, it was
5 rude. I do not like to be late. So we'll make up
6 for it by not letting any attorney speak today.

7 My name is Robert Laurie. I'm Presiding
8 Member of the Siting Committee. I'd like to
9 introduce my Associate on the Committee, Dr. David
10 Rohy. In the center is Mr. Gary Fay, our Hearing
11 Officer for this proceeding. And to Dr. Rohy's
12 right is Mr. Bob Eller, Dr. Rohy's Senior Advisor.

13 At this point I would like to ask Mr.
14 Fay to go over the agenda and our manner of
15 proceeding today. And to respond to any
16 administrative questions first.

17 HEARING OFFICER FAY: Thank you,
18 Commissioner Laurie. Today's hearing was noticed
19 on December 17, 1999, and gave direction to the
20 parties in a Committee order.

21 What I'd like to first do is ask the
22 parties to introduce themselves just for the
23 record. Mr. Grattan, we'll begin with the
24 applicant, petitioner.

25 MR. GRATTAN: On my right is Neco Sumait

1 from Arkenol and Tim O'Laughlin from the lawfirm
2 of O'Laughlin and Paris.

3 HEARING OFFICER FAY: Mr. Mundstock.

4 MR. MUNDSTOCK: I'm David Mundstock,
5 attorney for the Energy Commission Staff.

6 MS. TRONAAS: I'm Nancy Tronaas; I'm the
7 Compliance Project Manager with the Energy
8 Commission.

9 PRESIDING MEMBER LAURIE: And, Mr. Fay,
10 let me interrupt a moment. Dr. Rohy, I apologize,
11 did you have any opening comments or --

12 VICE CHAIRMAN ROHY: I do not, but thank
13 you for asking.

14 HEARING OFFICER FAY: All right, thank
15 you. I'd like to, just for the record, make some
16 opening remarks. And then we will get to any
17 opening remarks the applicant may have.

18 Then, as noticed, we've asked the staff
19 to respond to the applicant's filing of January
20 18th. And then we will look into taking evidence
21 on the question of good cause.

22 In May 1994 the Commission granted a
23 certificate for the power plant portion of the
24 Sacramento Ethanol and Power Cogeneration Project,
25 SEPCO.

1 It consists of a 148-megawatt natural
2 gas-fired cogen plant. The plant's thermal host
3 is proposed to be a rice straw-to-ethanol
4 manufactured plant.

5 On January 18, 1995, the Commission
6 adopted a modification to the license for the
7 SEPCO project, however the project has never begun
8 construction.

9 On April 19, 1999, SPI, the Sacramento
10 Power, Inc., SEPCO project owner, submitted a
11 petition under section 1720.3 of Commission
12 regulations requesting a three-year extension to
13 the normal five-year deadline for the beginning of
14 project construction.

15 On May 26th of last year the Commission
16 determined that the petition was timely filed and
17 directed this Committee to prepare a
18 recommendation to the full Commission on:

19 One, whether SPI has demonstrated good
20 cause for the extension of its construction
21 deadline.

22 And two, what changes to existing
23 conditions of certification and what additional,
24 if any, conditions of certification are required
25 in order for the previously licensed project to

1 comply with present law.

2 The Committee held a procedural
3 conference on July 1, 1999 for the parties to
4 address a number of questions regarding SPI's
5 request for extension and its proposed
6 modifications to the SEPCO project.

7 In a July 8, 1999 report, requested by
8 the Committee, staff outlined the scope of
9 analysis and anticipated schedule for review of
10 SPI's petition for extension.

11 The schedule presumed that the
12 Sacramento Metropolitan Air Quality Maintenance
13 District would issue a complete determination of
14 compliance or DOC on November 2, 1999 so that
15 staff would publish its complete environmental
16 analysis required under the California
17 Environmental Quality Act on November 12, 1999;
18 and then a 30-day review period would occur;
19 followed by evidentiary hearings.

20 And that the Committee would publish its
21 decision and recommendation to the full Commission
22 by January 14, 2000. Since that date was ten days
23 ago, this case is clearly not on schedule.

24 On August 23, 1999, SPI filed its
25 project description and environmental evaluation

1 which had been scheduled for filing on August 2nd.

2 On October 26th of last year, Commission
3 Compliance Project Manager Nancy Tronaas docketed
4 the status report describing staff's views on the
5 status of the project and detailing various
6 deficiencies in the project description and
7 environmental evaluation.

8 These deficiencies include a lack of
9 documented water supply, failure to document
10 environmental impacts of a proposed shift from
11 surface water to groundwater. Lack of a financing
12 partner for the project. Insufficient data
13 regarding the project's natural gas supply
14 pipeline. And also indicating the necessity for
15 further technical analysis in the areas of
16 transmission line interconnection. And air
17 quality BACT determination.

18 Staff estimated that these factors would
19 significantly delay construction of the power
20 plant beyond the applicant's estimated date to
21 begin construction in June of 2001.

22 Staff informed the applicant of the
23 above-noted matters and received no response. On
24 October 26, 1999, in a memo to the Committee staff
25 recommended that the Committee take no further

1 action on the petition.

2 However, by order dated May 26, 1999,
3 when the Commission accepted the SPI petition as
4 timely filed, the Commission also directed this
5 Committee to determine whether or not there is
6 good cause for granting SPI's petition.

7 If the Committee finds good cause for
8 the extension we are directed to carry out the
9 required environmental analysis under CEQA. The
10 Committee must then report back to the Commission
11 with a recommendation.

12 In the Committee's view, the
13 Commission's order is not an open-ended directive
14 without time limits. Therefore, we are here today
15 to learn about the current status of the SEPCO
16 project, and for the Committee to gather evidence
17 which will support a recommendation to the full
18 Commission.

19 In the notice and order issued on
20 December 12th, the Committee directed applicant,
21 SPI, to file a status report with the Commission's
22 docket. That was done. And applicant was
23 directed to inform the Committee of its plans for
24 the project, and to address the concerns raised by
25 staff in staff's October 26th memo.

1 The Commission Staff was directed to
2 comment on applicant's report that was filed on
3 January 18th.

4 PRESIDING MEMBER LAURIE: Let me ask
5 Commissioner Rohy if Commissioner Rohy has any
6 comments to add to Mr. Fay's comments.

7 VICE CHAIRMAN ROHY: I think he very
8 accurately conveyed what I -- my impressions of
9 the case.

10 PRESIDING MEMBER LAURIE: And I would
11 concur, Mr. Fay.

12 HEARING OFFICER FAY: Thank you.

13 We'll begin this morning with any
14 opening remarks which SPI may have and then
15 proceed with staff's comments on SPI's January
16 18th filing.

17 Because this hearing may serve as the
18 evidentiary basis for the Committee's
19 recommendation to the full Commission, witnesses
20 will give sworn testimony under oath.

21 Mr. Grattan.

22 MR. GRATTAN: Good morning. We are here
23 sort of to defend our reasonable further progress,
24 satisfactory progress. For the opening remarks
25 I'd like to turn the microphone over to Necy

1 Sumait from Ark.

2 We will focus in these opening remarks
3 on the power plant. I know it seems to me that
4 Commission and staff seem to be aware of our
5 efforts on the ethanol plant, and the question
6 that arises is what about the power plant. This
7 gives the Committee, this gives the Committee
8 jurisdiction. This is the jurisdictional issue.
9 So that's basically what we will address in our
10 opening remarks.

11 Necy.

12 HEARING OFFICER FAY: Mr. Sumait, could
13 we please swear you in.
14 Whereupon,

15 NECY SUMAIT
16 was called as a witness herein, and after first
17 having been duly sworn, testified as follows:

18 DIRECT TESTIMONY

19 MS. SUMAIT: I'm Necy Sumait. I'm
20 representing the applicant both on the power plant
21 and the ethanol plant. Certainly if you have any
22 further questions on the progress on the ethanol
23 plant I could address those, as well. But I think
24 I was pretty specific in the status report that we
25 have provided.

1 I just wanted to let the Committee and
2 the Commission Staff know that we certainly have
3 not been sitting back during these past few
4 months. We have been spending dollars and efforts
5 to line up all the issues to bring the power plant
6 to fruition.

7 Accordingly, Ark, itself, has been
8 maintaining the option agreement at \$10,000 a
9 month. We've supported the due diligence of the
10 buyer. We have signed an initial agreement with a
11 power plant partner. And they have proceeded with
12 their due diligence effort.

13 This buyer is also spending thousands of
14 dollars. They have retained -- they're using
15 outside counsel for the documentation of the
16 various agreements between our parties'
17 organizationally.

18 I've met with them and I need to tell
19 you there's a dozen people, just internally, that
20 was looking at the project.

21 They have also met with both WAPA and
22 SMUD, and they have asked both WAPA and SMUD to
23 provide them with an interconnection study for a
24 power plant at that site.

25 As you're well aware, the Calpine

1 project is now interconnecting into Elverta, so
2 clearly the buyer needs to ascertain the costs
3 associated with interconnection.

4 They understand and we agree that
5 technically it is feasible to interconnect. What
6 remains now is for them to get an understanding of
7 the cost of the interconnection.

8 So they have asked both utilities to
9 provide them with interconnection studies. And
10 that's really the reason why I've asked for.
11 Those studies will be done by mid-March, March
12 15th. They certainly will work towards completing
13 those studies sooner than that. And that's why we
14 have requested through the end of March to come
15 back to the Committee and Commission Staff to
16 amend or affirm the project description that we
17 have submitted before you.

18 DIRECT EXAMINATION

19 BY MR. GRATTAN:

20 Q Neco, do you want to address the water
21 situation?

22 A We have also had Tim O'Laughlin of
23 O'Laughlin and Paris continuing discussions with
24 the local water district, that's the Rio
25 Linda/Elverta Water District, to go over water

1 issues with SNAGMA, the regional water agency
2 that's been formed. I believe Tim has also tried
3 to meet with the County to resolve any issues
4 related to water supply there, as well.

5 So Tim has been on board throughout
6 these months to try to resolve any potential water
7 supply issues that would come up in the siting
8 case.

9 Q Neco, have the other permits,
10 specifically the federal permits, the Corps of
11 Engineer permits and the NPDES permit, which of
12 course is a regional permit, have they been
13 maintained in this interim? I noted that one of
14 them was scheduled to expire on September 15th.

15 A I have had conversations with the Corps
16 and they have confirmed that the nationwide permit
17 is still in place. I don't have the -- it's in
18 2001 is when it expires, I don't have the exact
19 month or date for that nationwide permit under
20 which our authorization would be based on.

21 We have submitted an NPDES extension
22 with the regional water quality control board.
23 Staff has told me and assured me that the permit
24 remains valid, and it's simply just a matter of
25 staff time. They believe it's an

1 administrative -- because we have not submitted
2 any changes to the project, it's an administrative
3 process that they will eventually get to. The
4 permit is valid unless they issue a rescission,
5 which they are not planning to issue.

6 Q And could you, for the Committee, could
7 you address specifically what type of agreement
8 you have with the power plant developer?

9 A We have signed an initial agreement with
10 the entity. We have -- it is for the assets we
11 are selling is our interests and our rights in any
12 work product and permits for the 148 power plant.

13 They have done the initial agreement.
14 Under the agreement they have a due diligence
15 period which expired December 10. We extended it
16 to the 14th. They have confirmed that they want
17 to go to the next step.

18 And that is we're now going through
19 documentation for the purchase and sale agreement.
20 But they have asked us to push that deadline for
21 them to accommodate the schedule and the
22 interconnection studies. They just wanted to get
23 an idea for the cost of interconnection before
24 they actually signed a purchase and sale
25 agreement.

1 MR. GRATTAN: Neco's available for
2 Committee or Staff examination.

3 HEARING OFFICER FAY: Okay, would the
4 staff like to cross-examine the witness?

5 MR. MUNDSTOCK: Oh, there are a couple
6 questions I could ask.

7 CROSS-EXAMINATION

8 BY MR. MUNDSTOCK:

9 Q What is the name of this potential
10 partner?

11 A Florida Power & Light.

12 Q Do you have any documentation regarding
13 an agreement with them?

14 A What I've given you is a redacted copy
15 of their name, but you know, I'll submit the -- I
16 don't want to submit the whole agreement. I think
17 the intent clearly is within that first paragraph
18 of that letter agreement.

19 Q Has this company indicated the size of
20 the power plant they're contemplating
21 constructing?

22 A No. Part of the agreement is for them
23 to take the information that they have, they're
24 clearly buying the 148. And for them to come back
25 and provide us with a project description. I have

1 not received a project description.

2 Q You don't know the capacity of the power
3 plant?

4 A No.

5 MR. MUNDSTOCK: So, if I can just make a
6 comment here, we have a power plant without any
7 capacity, therefore we have no description
8 whatsoever of the power plant. Now should --

9 HEARING OFFICER FAY: Let's limit this
10 to cross-examining the witness.

11 MR. MUNDSTOCK: Okay, all right. Well,
12 let me ask her another question.

13 BY MR. MUNDSTOCK:

14 Q If the power plant they propose
15 increases by 50 megawatts over the power plant
16 that SMUD had licensed here in 1994, I believe you
17 agree a new AFC would be required?

18 MR. GRATTAN: Yes.

19 MR. MUNDSTOCK: Okay, so then until you
20 get a description of this other party who is not
21 here regarding the capacity of the power plant,
22 you don't know if they intend to use the current
23 license?

24 MS. SUMAIT: The only agreement that is
25 between us is what we have, which is 148 megawatt,

1 which is what they're looking for. You know, and
2 clearly, like I said, part of the agreement is for
3 them to come back with a project description.

4 MR. MUNDSTOCK: But it's fair to say you
5 don't have a project description?

6 MS. SUMAIT: The only thing I have right
7 now is that we are conveying the rights of 148, so
8 the project description I have is 148 megawatt.
9 Unless I'm told by the entity that they are
10 changing the configuration -- and that's why I
11 need this time is for them to come back and tell
12 me.

13 And then we would be in a position to, I
14 think, decide for ARK, you know, what ARK would
15 do.

16 MR. MUNDSTOCK: I'm just trying to get
17 an understanding of the capacity of the power
18 plant that this other company intends to build.
19 Trying to get an understanding --

20 MR. GRATTAN: I believe the witness has
21 said she doesn't know.

22 MR. MUNDSTOCK: Don't know, okay. We
23 don't know the capacity.

24 MR. GRATTAN: Not at this time.

25 MR. MUNDSTOCK: All right.

1 Now you filed a January 17th, a status
2 report, did include a letter from PG&E to you --

3 MS. SUMAIT: Yes.

4 MR. MUNDSTOCK: -- dated July 16, 1999,
5 and this is on the pipeline, the gas supply to
6 both the ethanol plant and the power plant, is
7 that correct?

8 MS. SUMAIT: Yes.

9 MR. MUNDSTOCK: And PG&E, in this
10 letter, which you provide here as evidence of
11 progress, correct?

12 MS. SUMAIT: Certainly, it was
13 responding to the question about the source of the
14 natural gas supply.

15 MR. MUNDSTOCK: It is evidence of
16 progress?

17 MS. SUMAIT: Yes.

18 MR. MUNDSTOCK: It's the only new
19 evidence you provided in your attachments, right?

20 MS. SUMAIT: It's the only attachment I
21 provided.

22 MR. MUNDSTOCK: Okay. PG&E's letter
23 says, on page 2, that they are requesting a
24 project advance of \$40,000 to cover actual
25 preliminary engineering costs associated with

1 evaluation of various alternatives, is that
2 correct?

3 MS. SUMAIT: Correct.

4 MR. MUNDSTOCK: Did you pay the \$40,000
5 to have them do any evaluations?

6 MS. SUMAIT: We have not yet paid the
7 \$40,000.

8 MR. MUNDSTOCK: So they requested this
9 in July of 1999, so no further work has been done?

10 MS. SUMAIT: On that particular issue,
11 yes.

12 MR. MUNDSTOCK: No further work on the
13 gas supply. Are you aware of the conditions of
14 the settlement agreement between your company and
15 SMUD?

16 MS. SUMAIT: I know one exists --
17 particulars within it, --

18 MR. MUNDSTOCK: Are you aware that in
19 the settlement agreement SMUD did not transfer any
20 gas rights whatsoever?

21 MS. SUMAIT: Yes, but they have the
22 license that is attached to the SEPCO project.

23 MR. MUNDSTOCK: Yes, but you don't have
24 any gas rights to the gas line that SMUD had
25 licensed, correct?

1 VICE CHAIRMAN ROHY: Excuse me,
2 counselor, when you say you, would you be specific
3 as to who you mean.

4 MR. MUNDSTOCK: This applicant.

5 VICE CHAIRMAN ROHY: The applicant.

6 MR. MUNDSTOCK: The applicant.

7 VICE CHAIRMAN ROHY: Thank you.

8 MS. SUMAIT: I mean I don't know -- it's
9 been awhile since I've reviewed the settlement
10 agreement. I don't know.

11 MR. MUNDSTOCK: But you don't know if
12 you have any gas rights?

13 MR. GRATTAN: When you say gas rights,
14 do you mean the right to purchase gas, or the --

15 MR. MUNDSTOCK: The right to any portion
16 of the facilities that SMUD had licensed relating
17 to gas supply to the original SEPCO project.

18 MS. SUMAIT: I don't know. I mean
19 clearly the documentation is there. I don't know.

20 MR. MUNDSTOCK: So PG&E doesn't know,
21 either, then since there's been no discussion on
22 this subject?

23 MS. SUMAIT: Except that they have
24 confirmed that the route that they have quoted to
25 SMUD is a route that would be viable and preferred

1 for this project.

2 I mean the route is the same, the
3 environmental documentation is the same. And at
4 this point we had opted not to do the engineering
5 study yet, which they were going to provide us the
6 route. And they've already told us what the route
7 is.

8 MR. MUNDSTOCK: And the route is --

9 MS. SUMAIT: The same --

10 MR. MUNDSTOCK: -- the SMUD route?

11 MS. SUMAIT: -- the SMUD route.

12 MR. MUNDSTOCK: Which is owned by?

13 MS. SUMAIT: SMUD, as far as I know,
14 have the rights-of-way. I don't think that
15 they've control -- it's within roads, it's within
16 public roads. And PG&E may -- I've not have this
17 discussion with them, they may even have franchise
18 rights over those roads already.

19 MR. MUNDSTOCK: But you're not sure?

20 MS. SUMAIT: I'm not sure.

21 MR. MUNDSTOCK: And when PG&E in their
22 letter described the project as, quote, "still in
23 the early planning stages", would you say that was
24 accurate?

25 MS. SUMAIT: That letter was dated July.

1 MR. MUNDSTOCK: But nothing --

2 MS. SUMAIT: Prior to us submitting -- I
3 have not attempted to follow up that letter for
4 them to acknowledge any conversation that has gone
5 before, you know, between us since July and today.

6 MR. MUNDSTOCK: There's been no follow
7 up on the gas line since July with PG&E?

8 MS. SUMAIT: Other than, you know,
9 periodic conversations with them just to keep them
10 abreast on the schedule of the project.

11 MR. MUNDSTOCK: I have no further
12 questions at this time.

13 HEARING OFFICER FAY: Okay.

14 MR. GRATTAN: If I can just, maybe not a
15 redirect, if you'll just -- I believe the point of
16 ARK's position on the gas line is not that they
17 have the rights to that gas line, but in fact, the
18 environmental impacts of that route have been
19 reviewed under the Commission's certification of
20 the SMUD project, the ARK segment of the SMUD
21 project.

22 HEARING OFFICER FAY: I see, and that
23 PG&E would use that same corridor, is that
24 correct?

25 MS. SUMAIT: Yes, PG&E has confirmed

1 that they could use that routing.

2 HEARING OFFICER FAY: Okay.

3 EXAMINATION

4 BY MR. ELLER:

5 Q In the five-plus years since you were
6 licensed have the environmental conditions along
7 the routes and around the power plant changed?
8 Has there been growth in that area?

9 A I am not aware of any changes to the
10 conditions since we filed and received the
11 application.

12 PRESIDING MEMBER LAURIE: Question.

13 BY PRESIDING MEMBER LAURIE:

14 Q Your petition requests a three-year
15 extension to initiate construction, does it not?

16 A Yes, the original petition did that,
17 correct.

18 Q And does that remain your position that
19 you are still seeking three years?

20 A Yes.

21 Q Why would three years be necessary if
22 you have a potential buyer and user?

23 A It may not be, but I guess until we know
24 exactly what their plans are, we are seeking that
25 three-year extension. I mean just --

1 HEARING OFFICER FAY: Is anybody present
2 from Sacramento County, representatives of the
3 county?

4 Nobody's indicating they are here.
5 Could you identify yourself, sir, please?

6 (Whereupon, a discussion was held off
7 the record.)

8 HEARING OFFICER FAY: Okay, nobody from
9 County Planning? Okay, thank you.

10 BY HEARING OFFICER FAY:

11 Q Ms. Sumait, at our July 1st hearing you
12 introduced Mr. Howell of the Department of Energy
13 and he described their involvement at that time.
14 Is DOE still involved in the project?

15 A Yes, they are, very much.

16 Q Has their involvement changed since July
17 1?

18 A They provided us with some funds, but
19 that was the case then.

20 Q So they're still interested in providing
21 funds?

22 A They have.

23 Q They have provided funds --

24 A Yes.

25 Q -- to the project? Okay. So they are

1 involved. Do you know if this is going to involve
2 a full NEEPA review?

3 A They have said that it will not.

4 Q It will not, all right.

5 MR. MUNDSTOCK: Mr. Fay?

6 MS. SUMAIT: We have -- it had to do
7 with the scope of the agreement. We had some
8 further discussions with them, and revised the
9 scope differently. And that revised scope does
10 not require more than what studies they've already
11 done.

12 HEARING OFFICER FAY: Okay.

13 MR. MUNDSTOCK: Mr. Fay?

14 HEARING OFFICER FAY: Yes.

15 MR. MUNDSTOCK: May I clarify that
16 point. I have in my hand an email sent to the
17 staff from Timothy Howell of DOE indicating that
18 they would not be providing any financing for
19 construction of the ethanol plant. That the
20 agreements will end prior to construction of the
21 proposed ethanol plant, unquote. And it goes on
22 to explain that will not require any environmental
23 study by DOE.

24 So they are out of the environmental
25 review business for the entire project. And so

1 that is a significant change because I believe
2 it's true that when the applicant first came here
3 with DOE the expectation was that they would be
4 providing construction funds. At least the hope
5 was.

6 MS. SUMAIT: It is engineering funds.
7 In the DOE description they considered -- it was
8 never, you know, to lay -- move dirt. It's never
9 been that. But it's detailed engineering related
10 to construction.

11 MR. GRATTAN: I'd greatly appreciate
12 seeing that. It's an email to staff?

13 MR. MUNDSTOCK: Yes.

14 MR. GRATTAN: I'd sure appreciate taking
15 a look at that. We know the negative view, you've
16 introduced the negative things about it. I
17 presume it says that they're going to be financing
18 something in there.

19 MR. MUNDSTOCK: Well, what they're going
20 to be financing doesn't require any environmental
21 review.

22 MR. GRATTAN: Okay.

23 MS. SUMAIT: Right.

24 MR. GRATTAN: But could we please see
25 that?

1 HEARING OFFICER FAY: Could you share
2 that with counsel, please.

3 MR. MUNDSTOCK: Let's make some copies.

4 HEARING OFFICER FAY: All right. And,
5 Ms. Sumait, can you anticipate what review will be
6 necessary by the air district based on the state
7 of the project at this time?

8 MS. SUMAIT: Yes, on the ethanol side
9 they would have to do a BACT offsets. I mean I'm
10 expecting that they would basically have to do
11 what they did before.

12 HEARING OFFICER FAY: So essentially a
13 new DOC?

14 MS. SUMAIT: Yeah. There will be for
15 the ethanol plant an authority to construct, and
16 for the power plant a determination of compliance.

17 HEARING OFFICER FAY: Okay. I have
18 nothing further. Why don't we move to the --

19 PRESIDING MEMBER LAURIE: I'm interested
20 in knowing are you going to ask staff to present
21 argument?

22 HEARING OFFICER FAY: Yes, I was going
23 to move to -- if the Committee has no further
24 questions of the applicant at this time, or the
25 petitioner, we will ask staff to provide their

1 comments on the applicant's filing and any other
2 comments they wish to provide.

3 I had earlier requested Mr. Haussler to
4 be present. And if that would be helpful in your
5 presentation we can swear him at this time.
6 Otherwise, bring him up later, whatever your wish
7 is, Mr. Mundstock.

8 MS. TRONAAS: Possibly later.

9 HEARING OFFICER FAY: I'm sorry?

10 MS. TRONAAS: Later.

11 HEARING OFFICER FAY: Okay. Ms.
12 Tronaas, can we swear you as a witness.

13 MS. TRONAAS: Yes.

14 Whereupon,

15 NANCY TRONAAS
16 was called as a witness herein and after first
17 being duly sworn, was examined and testified as
18 follows:

19 DIRECT TESTIMONY

20 MS. TRONAAS: Technical staff did review
21 both the SPI's August 1999 petition and their
22 January 17th response to my October 26 status memo
23 to the Committee. And based on review of these
24 documents it is apparent that the development of
25 the power plant is uncertain at this time, in

1 major part due to lack of financing, a financing
2 partner for the power plant.

3 SPI has requested a suspension of the
4 current proceedings for at least two months so
5 they can continue to secure a partner for the
6 power plant.

7 Staff is concerned that the relevancy
8 and validity of the original staff environmental
9 analysis will continue to diminish with time, as
10 it is possible that the power plant would not
11 commence operations almost ten years after the
12 project was certified in 1994 if an extension were
13 granted.

14 It's staff's opinion that the request
15 for extension of the construction start date be
16 denied, due to the uncertainty of financing of the
17 power plant, coupled with the request for project
18 phasing without assurances that the power plant
19 would be constructed.

20 This would allow the potential for the
21 Energy Commission regulatory function over an
22 ethanol and citric acid plant that is not subject
23 to Energy Commission jurisdiction.

24 The project proponent can file a new AFC
25 with the Commission when the power plant is more

1 fully defined.

2 Key issues concerning SPI's January
3 response that staff would like to comment on is
4 that with regard to the intent to build the power
5 plant in phasing is that it is our concern that
6 phasing with the project construction is not the
7 equivalent to a delayed preparation of a project
8 definition or provision of environmental analyses.

9 Our indication that the power plant is
10 still an uncertain component is the lack of
11 financing; the fact that their conversations with
12 the water district only address the ethanol plant.
13 They have failed to be able to provide evidence of
14 a gas supply purveyor for this project.

15 With response to water supply issues,
16 the conditional will serve letter again addresses
17 only the ethanol plant. And their response does
18 not address the fact that the original
19 certification prohibited groundwater pumping. And
20 it does not provide a complete analysis of the
21 switch to groundwater pumping by the Rio Linda
22 Water District, or the addition of possibly up to
23 three new wells by the Rio Linda Water District.
24 And defers environmental analysis of the impacts
25 of those new water wells to serve the project.

1 We have no issues regarding their
2 comments concerning a financing partner.

3 Regarding current land use and LORS, the
4 Rio Linda/Elverta community plan was updated in
5 1998. The petition does not fully address the
6 potential effects of the project with concern to
7 new standards that may have been imposed by the
8 Rio Linda community plan.

9 We've already covered the issues of
10 potential gas supply purveyor.

11 And SPI did concur that additional
12 technical studies such as BACT and interconnection
13 studies are still remaining.

14 Based on these outstanding issues it
15 would appear that denial of the extension for the
16 license would be an appropriate avenue to allow
17 SPI to then come back and file a new AFC with
18 their clear project definition.

19 And that is all I have to say at this
20 point in time.

21 HEARING OFFICER FAY: Okay. Perhaps we
22 could have Mr. Haussler come up so that when the
23 applicant cross-examines the witnesses they will
24 have everybody available.

25 Would you please swear the witness?

1 Whereupon,

2 ROBERT HAUSSLER

3 was called as a witness herein and after first
4 being duly sworn, was examined and testified as
5 follows:

6 HEARING OFFICER FAY: Mr. Mundstock,
7 could you establish Mr. Haussler's background and
8 credentials.

9 MR. MUNDSTOCK: Yes.

10 DIRECT EXAMINATION

11 BY MR. MUNDSTOCK:

12 Q Mr. Haussler, could you please describe
13 your position at the Energy Commission and your
14 general experience with siting matters?

15 A I am currently the Office Manager of the
16 Power Plant Siting Office at the Commission. I've
17 been an employee of the Commission since 1976 and
18 been involved with power plant licensing since
19 that time.

20 Q And are you an expert, having worked on
21 data adequacy matters with countless AFCs?

22 A Well, I think I can count them, but yes,
23 I have been serving as an expert in the area of
24 everything from environmental concerns, and
25 serving in the capacity as an office manager over

1 that area in the past. As well as from the
2 standpoint of looking at applications concerning
3 data adequacy.

4 Q Now, turning to this particular project
5 which is the project filed now as part of the
6 request for an extension of the license, is the
7 information provided by this applicant, in your
8 opinion, comparable to that provided by a normal
9 applicant for a normal AFC?

10 A It is not at this time.

11 Q Do you believe any applicant would file
12 this amount of information as an AFC?

13 A I've not seen an application with the
14 deficiencies that we currently are faced with, nor
15 could we begin analysis in a number of disciplines
16 in order to analyze this project.

17 Q So, if it was treated as an AFC, is it
18 fair to say it would be the most deficient AFC
19 you've ever seen?

20 PRESIDING MEMBER LAURIE: Mr. -- I don't
21 need an answer to that.

22 MR. MUNDSTOCK: Okay, let me ask a
23 different question.

24 BY MR. MUNDSTOCK:

25 Q If it was filed as an AFC, would it be

1 data adequate?

2 A I would be comfortable saying no, it
3 would not.

4 Q Could you list a few of the areas, I'm
5 not asking you to list them all, where it would be
6 data inadequate?

7 PRESIDING MEMBER LAURIE: Let me
8 interrupt again. Mr. Fay, staff seems to be
9 utilizing the standard of an AFC to determine
10 whether or not there is sufficient data to proceed
11 in this manner.

12 I'm not satisfied that's a correct
13 standard. We have before us an extension, I think
14 it's a first extension that this Commission has
15 ever considered.

16 And when the Commission reviewed the
17 application they instructed this Committee to
18 review the application pursuant to the regulation.
19 The regulation requires a) a showing of good
20 cause, but b) also there needs to be an
21 environmental analysis of the request because it's
22 a discretionary action.

23 So let me ask you, because I'm inclined
24 to disallow any question regarding utilization of
25 an AFC standard, in your view why would that be

1 relevant?

2 HEARING OFFICER FAY: I think that your
3 concern is well placed in terms of the formality
4 that has evolved about an AFC and the guidelines,
5 that sort of thing.

6 However, I think that it can serve as a
7 metaphor for determining whether the Committee, as
8 directed by the Commission, can make the analysis
9 that it must make and the findings it must make
10 under CEQA, as to whether this extension should be
11 granted.

12 So, I think it can be informative, just
13 as I say, as a metaphor, to know whether the
14 Committee can rely on the data filed to move
15 forward and analyze the environmental impacts of
16 the petition.

17 PRESIDING MEMBER LAURIE: Okay, I don't
18 have a problem with that. But I'm not about to,
19 by this hearing, create a policy of this
20 Commission that says that an application for
21 extension has to be the equivalent of an AFC. I
22 do not believe that that is our regulation, as it
23 currently stands, and I'm not prepared to propose
24 that as a regulation.

25 To the extent that we find inadequate

1 information, so as to allow us to proceed to do
2 the environmental examination, well, I think that
3 that is, on the other hand, very relevant.

4 But to the extent that staff seeks to
5 have this Committee adopt AFC as a standard on
6 extensions, I'm not prepared to go there.

7 MR. MUNDSTOCK: Let me ask the question
8 a different way.

9 BY MR. MUNDSTOCK:

10 Q In order to conduct a CEQA-level
11 analysis, you need a certain amount of information
12 from a filing?

13 A That's correct, we need a certain amount
14 of information and I believe your question earlier
15 had to do with if there were any areas?

16 Q Do you have sufficient information to
17 conduct an environmental analysis in accordance
18 with the California Environmental Quality Act?

19 A No, we do not.

20 Q And can you list some of the areas where
21 there are deficiencies?

22 A I think the most significant areas
23 include air quality, water supply, perhaps water
24 quality, biological resources, land use and
25 transmission interconnection in the gas line, and

1 the impacts associated with those.

2 HEARING OFFICER FAY: Mr. Haussler, in
3 the sense of an initial study, could you assess
4 those impacts based on the information you now
5 have?

6 MR. HAUSSLER: No, we could not, given
7 our understanding that the project still is to be
8 defined, the existing information concerning the
9 status of the proposed project. Lacking that
10 information we're unable to complete an applicable
11 initial study.

12 HEARING OFFICER FAY: Anything further
13 on direct, Mr. Mundstock?

14 MR. MUNDSTOCK: No.

15 HEARING OFFICER FAY: All right, why
16 don't we allow the applicant to cross-examine the
17 witnesses.

18 MR. GRATTAN: I'll treat you as a panel
19 here, if that's okay.

20 CROSS-EXAMINATION

21 BY MR. GRATTAN:

22 Q First, Mr. Haussler, how many requests
23 for extensions, initial study supporting a request
24 for a permit extension have you reviewed, other
25 than this one?

1 A This is the only one.

2 Q This is the only one, thank you. Water,
3 water supply. I'm under the distinct impression
4 that while the applicant only submitted a will
5 serve letter for the ethanol part of the project,
6 I was under the distinct impression that its
7 submission addressed the water supply requirements
8 for the ethanol plant and the 140-megawatt power
9 plant combined.

10 Did you review the attachment 2 of the
11 applicant's submission, Ms. Tronaas?

12 MS. TRONAAS: Yes, I did, and the letter
13 only addresses the ethanol.

14 MR. GRATTAN: That is the will serve
15 letter. I mean the modeling and the applicant's
16 environmental analysis of the total water supply
17 requirements.

18 MS. TRONAAS: That is the applicant's
19 analysis.

20 MR. GRATTAN: Yes, thank you, the
21 applicant -- then if I were to ask you did the
22 applicant analyze the environmental impacts of
23 3,393 acrefeet, would your answer be yes?

24 MS. TRONAAS: The applicant provided
25 modeling information. The applicant deferred the

1 environmental analysis of additional water well
2 pumping to the water district to be further
3 analyzed.

4 MR. GRATTAN: But the applicant did
5 submit modeling data indicating the impact on the
6 groundwater of an extraction of 3,393 acrefeet?

7 MS. TRONAAS: I believe the modeling
8 data did address that.

9 MR. GRATTAN: Okay. And with regard to
10 community plans, are you aware of anything in the
11 new Rio Linda community plan that would preclude
12 the development of 148 megawatt power plant and an
13 ethanol plant?

14 MS. TRONAAS: I am not going to
15 summarize what those issues may be covered in the
16 plan. I do know that the submittal that you
17 provided simply provided a list of plans in the
18 area and did not provide an analysis of any
19 changes to the policies provided in the updated
20 Rio Linda community plan. It simply stated that
21 you were not aware of any changes, and that's not
22 an analysis.

23 MR. GRATTAN: But the applicant did
24 state that they were unaware of any change that
25 would preclude the development of the power plant?

1 MS. TRONAAS: That is what was stated by
2 the applicant.

3 MR. GRATTAN: All right. It's sort of
4 hard to prove a negative, but anyway. Do you know
5 if the community plan provided water for the
6 project?

7 MS. TRONAAS: I did not personally
8 review the community plan.

9 MR. GRATTAN: Okay. If I were to tell
10 you that it did, would that surprise you?

11 MS. TRONAAS: It is a community plan
12 that typically may not be able to address all
13 aspects of an individual project.

14 MR. GRATTAN: But my question was if I
15 were to tell you that the community plan, the new
16 community plan did provide for water for the SEPCO
17 project, would that surprise you?

18 MS. TRONAAS: I can't respond to that.

19 MR. GRATTAN: Okay, okay. Are you aware
20 of what the cost of an interconnection, electric
21 interconnection study is typical?

22 MS. TRONAAS: No.

23 MR. GRATTAN: Okay, how about the study
24 required for the PG&E gas supply?

25 MS. TRONAAS: I am only aware of what

1 was represented in the letter that you submitted
2 as an attachment.

3 MR. GRATTAN: And are you aware that the
4 applicant has selected as its pipeline route the
5 same pipeline route that was certified by this
6 Commission in I think it's 2-AFC-92-A, the SMUD
7 pipeline?

8 MS. TRONAAS: That is what was
9 represented in the petition.

10 MR. GRATTAN: Okay. If you were to
11 recollect some of the testimony that was given
12 earlier, that the applicant currently has an
13 agreement, at least an agreement in principle,
14 with a financing partner to look at the plant,
15 would that change some of your conclusions which
16 you came into the hearing with regarding the
17 recommendation to terminate the project?

18 MS. TRONAAS: Not at this point.

19 MR. GRATTAN: Okay. That's all the
20 cross that I have. I'd like, before we close, to
21 be able to sum up sort of a project status and
22 legal point.

23 HEARING OFFICER FAY: Certainly. Just a
24 moment.

25 (Pause.)

1 PRESIDING MEMBER LAURIE: I need a copy
2 of the will serve. Do I have that, Gary? I've
3 been -- don't see it.

4 HEARING OFFICER FAY: I believe -- from
5 the water district?

6 PRESIDING MEMBER LAURIE: Yes.

7 HEARING OFFICER FAY: I believe so.
8 Okay.

9 PRESIDING MEMBER LAURIE: I need a
10 little further discussion about the will serve.
11 Is it the applicant's position that the
12 conditional will serve dated June 29 is applicable
13 to more than just the ethanol plant?

14 MR. GRATTAN: No, that's not our
15 position. It never has been. I would like to
16 help the Commission out a little bit, and I'd like
17 to put Tim O'Laughlin on the stand to respond to
18 any questions. We'll put him under oath and he is
19 the water attorney who has managed the entire
20 water situation for this project. And I think
21 there are some things that the Commission needs
22 elaborated on.

23 PRESIDING MEMBER LAURIE: Let me ask
24 first, at the time this project was approved there
25 was an environmental analysis, was there not?

1 MR. GRATTAN: Correct.

2 PRESIDING MEMBER LAURIE: And that
3 environmental analysis included an analysis of
4 water supply, did it not?

5 MR. GRATTAN: Correct.

6 PRESIDING MEMBER LAURIE: Question to
7 staff. Is it your position that you are required
8 to analyze any changing conditions that could
9 affect water supply?

10 MR. MUNDSTOCK: Absolutely, and --

11 PRESIDING MEMBER LAURIE: Okay, that's -
12 -

13 MR. MUNDSTOCK: May I explain my answer?

14 PRESIDING MEMBER LAURIE: No. No need
15 to do that.

16 And is it your position that as part of
17 that analysis you are requesting or requiring an
18 update on whether or not the district is, and
19 remains prepared to supply sufficient water to
20 serve this project?

21 MR. MUNDSTOCK: We would expect signed
22 contracts from the water district. But in this
23 case, because the original AFC has condition of
24 certification of water-1 prohibiting the use of
25 any further groundwater, we would consider this

1 modification of the project to raise significant
2 adverse environmental impact, which was the
3 original staff position in the original AFC which
4 caused the applicant to abandon its original
5 proposal to use groundwater and to then come with
6 two further proposals on water, neither one of
7 which used groundwater.

8 This is now proposal four. It is back
9 to groundwater, the originally rejected proposal.
10 And, of course, the letter from the Rio Linda
11 Water District is not an offer to provide water.
12 It contains so many conditions, including
13 environmental review, that it is really a
14 statement, if taken objectively, that they do not
15 have a water supply, which has been the major
16 issue in this case from the beginning.

17 And unfortunately, they have not made
18 any progress on this issue. They still don't have
19 a water supply for the ethanol plant, because this
20 letter dated June 29, 1999, is a statement that
21 the ethanol plant does not have a reliable water
22 supply.

23 It makes no mention of the power plant,
24 which presumably has even less.

25 PRESIDING MEMBER LAURIE: I would like

1 to hear the testimony from the water expert.

2 MR. GRATTAN: Yes.

3 HEARING OFFICER FAY: Please swear the
4 witness.

5 MR. GRATTAN: If Mr. O'Laughlin could be
6 sworn in.

7 MR. O'LAUGHLIN: Well, attorneys don't
8 like getting sworn in --

9 MR. GRATTAN: Yeah, but there is --

10 (Laughter.)

11 HEARING OFFICER FAY: Unfortunately we
12 need an evidentiary record in this.

13 PRESIDING MEMBER LAURIE: Well, let me -
14 -

15 MR. O'LAUGHLIN: The Commissioner said
16 he didn't want to hear from attorneys today -- I'm
17 just kidding.

18 PRESIDING MEMBER LAURIE: No, let me
19 ask. Wait, wait, wait, wait, let me ask. Do you
20 intend to offer argument or do you intend to offer
21 expert testimony?

22 MR. O'LAUGHLIN: Expert testimony,
23 Commissioner.

24 //

25 //

1 Whereupon,

2 THOMAS O'LAUGHLIN

3 was called as a witness herein and after first
4 being duly sworn, was examined and testified as
5 follows:

6 DIRECT TESTIMONY

7 MR. O'LAUGHLIN: If I can briefly sum up
8 my statement of qualifications, I've been working
9 on this project now since almost it's inception.

10 Previously and now I am special water
11 counsel for Rio Linda/Elverta Community Water
12 District. I have been working with Rio Linda/
13 Elverta Community Water District in the water
14 forum, in the SNAGMA forum, in the water purveyor
15 specific forum.

16 My office drafted its attachment number
17 2, some 23 pages of written testimony that we
18 submitted back in August for this project.

19 In my mind, there is no doubt in my
20 mind, I've had numerous conversations with Rio
21 Linda Water District, Rio Linda/Elverta Community
22 Water District. Rio Linda/Elverta Community Water
23 District stands ready to serve both the ethanol
24 plant and the power plant.

25 The modeling that was done by Camp,

1 Dresser, McKee was done specifically with the
2 understanding that the amount of water, I think
3 it's 3,392 acrefeet of water that would be pumped
4 from Rio Linda/Elverta Community Water District
5 would be delivered both to the ethanol plant and
6 to the power plant.

7 There is no will serve letter presently
8 for either the ethanol plant or for the power
9 plant because Rio Linda has not been given
10 specific directions as to the specific amounts of
11 water or capacity that is needed for either one of
12 those projects.

13 And as you know, they don't want to go
14 forward yet because they're looking at sizing
15 their mains and the interconnections between their
16 facilities.

17 To give you some further background, all
18 I do is water. I represent water districts,
19 numerous water districts from Bakersfield to
20 Redding. A conditional will serve letter is an
21 indication and it has been used previously in
22 other districts that I've worked for in providing
23 assurances to contractors and developers that if
24 and when they needed a water supply a water supply
25 will be available subject to certain terms and

1 conditions.

2 The terms and conditions that your staff
3 attorney addresses are mainly concerns addressing
4 the financing of the project and not whether or
5 not the project would go forward.

6 The only environmental documentation
7 that Rio Linda/Elverta Community Water District is
8 looking at doing is looking at specifically under
9 CEQA, the laying of the pipelines and the drilling
10 of the wells.

11 In regards to the environmental
12 documentation needed for the project, we thought -
13 - and I take exception to your siting staff's
14 analysis -- in the documentation it clearly shows
15 that what we set forth by Camp, Dresser and McKee,
16 that there's little or no impact to the
17 groundwater table under Rio Linda or in the north
18 area.

19 If there is any impact to the
20 groundwater in the north area, that will be
21 handled by SNAGMA, which is the Sacramento North
22 Area Groundwater Management Authority.

23 The Management Authority has the ability
24 to look at in lieu water conveyances and
25 financing. And in this case, if water was brought

1 in by either Northridge Water District or Natomas
2 Central Mutual Water Company into their areas as
3 surface water, that water may be paid for
4 indirectly by Rio Linda/Elverta Community Water
5 District to help offset the charges for that water
6 and bringing it in.

7 That's being handled under the County,
8 the City and the City of Roseville. So there is
9 an authority and mechanism in place under what Rio
10 Linda believes is the proper forum for determining
11 what, if any, mitigation Rio Linda would have to
12 do.

13 And to give you some background on that.
14 I was the attorney for Rio Linda/Elverta Community
15 Water District when we sued SNAGMA to clarify the
16 terms and conditions of SNAGMA's authority vis-a-
17 vis Rio Linda/Elverta Community Water District.

18 Finally, the last one that I find
19 interesting is in our submittal we put in that
20 under the Rio Linda/Elverta Community Plan that
21 was recently done by the County of Sacramento, this
22 project was specifically included within that
23 plan, a water supply was provided under that plan.
24 And under PF8, which is the County jurisdiction
25 and ordinance, it specifically allows that Rio

1 Linda can serve this site with groundwater.

2 So not only does Rio Linda have the
3 authority to serve it, but under the County
4 planning document it has the ability to serve it.
5 And water was a major issue in regards to the
6 community plan for Rio Linda.

7 I also represented Rio Linda in their
8 lawsuit against the County on that, and we entered
9 clarifying language in regards to PF8, which sets
10 out that Rio Linda could serve this area because
11 it was not an area that would be developed under
12 the community plan.

13 My overall picture and opinion as an
14 expert working on this case since its inception is
15 that -- and even when you go back and look at the
16 original testimony that was provided by Montgomery
17 Watson, there are little or no groundwater supply
18 impacts under this project. If there are, they're
19 identifiable and they're subject to mitigation.

20 I believe, and it's my opinion, based on
21 my conversations with Mr. Phelan and the with the
22 board of directors of Rio Linda/Elverta Community
23 Water District, that if and when specific design
24 specifications are provided to Rio Linda/Elverta
25 Community Water District that they will serve not

1 only the ethanol plant with water, but they will
2 serve the power plant with water.

3 DIRECT EXAMINATION

4 BY MR. GALATI:

5 Q Mr. O'Laughlin, you mentioned you
6 represented the Rio Linda Community Water
7 District. Have you been authorized or granted
8 permission by them to appear on behalf of the
9 applicant today?

10 A No. What I've been provided is that I
11 have worked with Mr. Phelan since he has come on
12 board as general manager. In the last six months
13 I've been directed by my client, Arkenol, to work
14 out an agreement with Rio Linda in order to assure
15 that there would be a supply of water available to
16 the applicant if and when it decided to go
17 forward.

18 I believe I've completed that task, and
19 my understanding with Rio Linda/Elverta Community
20 Water District is that if and when they get the
21 design specifications they will serve water to
22 both projects, the ethanol plant and the power
23 plant.

24 Q But you are representing this applicant
25 with the knowledge of the Rio Linda Community

1 Water District?

2 A Yes, I have informed Rio Linda/Elverta
3 Community Water District, of course, as you know,
4 pursuant to the Business and Professions Code, of
5 my potential for conflict in this situation. That
6 board was advised of that in writing, understood
7 the potential for a conflict, and waived that
8 conflict and has allowed me to represent Arkenol
9 and to be still retained as their special counsel
10 on water issues.

11 Q Are you aware of the condition in the
12 existing license regarding presenting the
13 Committee with firm water supply contracts?

14 A Yes, I am.

15 Q And are they required -- were they
16 required prior to the Commission's issuance of the
17 certification or were they required prior to
18 construction of the project?

19 A Construction of the project.

20 Q Thank you.

21 MR. GRATTAN: Maybe I can make this a
22 little simpler. The applicant SEPCO is not
23 alleging that the environmental review it
24 performed in its August submittal is necessarily a
25 perfect and adequate, even, document.

1 What we're saying is that if you give us
2 until the end of March we'll either provide that
3 or we won't be back here before this Committee,
4 before this Commission again.

5 PRESIDING MEMBER LAURIE: Question. Let
6 me ask Mr. O'Laughlin, -- I'm sorry, did I
7 pronounce your name --

8 MR. O'LAUGHLIN: Yes, that's very good
9 for the first time.

10 PRESIDING MEMBER LAURIE: You're
11 knowledgeable on CEQA issues, are you not?

12 MR. O'LAUGHLIN: Yes, I am. I deal with
13 CEQA on a daily basis for my districts. And
14 recently I've probably completed five or six
15 lawsuits in Sacramento County Superior Court in
16 the last three or four months on CEQA.

17 PRESIDING MEMBER LAURIE: When a
18 conditional will serve is issued that defines
19 those activities necessary before water might be
20 made available, as an example, if a conditional
21 will serve said water will be made available, one
22 of the conditions being, however, that there has
23 to be a ditch constructed between points A and B.
24 Or there has to be some sort of plant installed at
25 the south end of the project. And that's part of

1 the condition. Is it your view that the
2 environmental consequences of those improvements
3 under CEQA have to be analyzed as part of the
4 project environmental review?

5 MR. O'LAUGHLIN: At the time that the
6 project would move forward I would say that that
7 would be correct. If you're asking specifically
8 as to the act of the will serve letter being
9 issued, I would say no.

10 But before the project would commence,
11 and I think it's in the conditional will serve
12 letter from Rio Linda, it says that the
13 appropriate CEQA documentation would occur.

14 The question I think that's an
15 interesting question under CEQA would be does the
16 Energy Commission retain the jurisdiction for CEQA
17 vis-a-vis the actual installation of the wells and
18 the pipeline, in the original documentation that
19 was handled by Northridge Water District with any
20 mitigating dec, or does the Rio Linda/Elverta
21 Community Water District retain jurisdiction for
22 CEQA purposes because the project would be their
23 installation of wells and pipelines.

24 I think the CEQA question for the Energy
25 Commission clearly, and your staff has set this

1 one out very well, is what impacts will happen if
2 and when groundwater is pumped and delivered to
3 the project, which I think the CEC has
4 jurisdiction over and needs to address before
5 moving forward.

6 PRESIDING MEMBER LAURIE: Okay, I hear
7 that position, but let me again ask, I'm not sure
8 I got an answer to it.

9 Let me refer specifically to condition 3
10 of the June 29th letter. And that talks about the
11 developer contract that's going to require you to
12 construct those capital projects that are
13 necessary to serve the plant.

14 My question is as part of the
15 environmental analysis for the plant that we're
16 conducting, don't we also have to include the
17 environmental analysis of the necessary
18 improvements that are required to provide water?

19 MR. O'LAUGHLIN: I see where you're
20 going with it now. And I think the answer is
21 clearly yes. Under all CEQA law if you try to
22 segment out that portion of the project which in
23 the greater project clearly has other actions that
24 will be necessary that may have an impact on the
25 environment, the CEC would need to address those,

1 yes.

2 PRESIDING MEMBER LAURIE: Thank you.

3 Then at what point in time would the Energy
4 Commission be in a position to do an environmental
5 analysis that would reflect an analysis of those
6 capital improvements necessary to provide water to
7 this project?

8 MR. O'LAUGHLIN: I see the conundrum I'm
9 in. The answer is until the Rio Linda/Elverta
10 Community Water District is provided with specific
11 capacities, the location and siting of wells and
12 infrastructure, while it has been done on a
13 preliminary basis, would not have been done on a
14 final basis, nor have any of the alternatives been
15 set forth.

16 There is a preliminary routing and a
17 preliminary siting of wells that has been provided
18 to the Energy Commission, but those are not yet
19 final pending the petitioner's description of the
20 project in more greater detail.

21 PRESIDING MEMBER LAURIE: Thank you. So
22 let me then ask the project representative, at
23 what point in time will the water district have
24 sufficient information in front of it so as to be
25 able to more properly define the water improvement

1 plan that will in turn allow us to do an
2 environmental analysis of that plan?

3 MR. GRATTAN: Let me consult with
4 counsel.

5 (Pause.)

6 MR. GRATTAN: I think the witness is
7 going to respond to this.

8 MR. O'LAUGHLIN: I don't control the
9 pursestrings of Arkenol. My understanding is,
10 working on the time schedule that the applicant
11 has asked for, and working on the previous
12 extension request, we can provide from Rio
13 Linda/Elverta Community Water District not only
14 where the wells will be located and the pipeline,
15 but provide the Energy Commission Staff with the
16 initial environmental review document that Rio
17 Linda would be looking at doing, if it had done
18 those projects, itself, rather than having the
19 Energy Commission do those. And that could be
20 done by March 1st.

21 HEARING OFFICER FAY: Okay.

22 MR. MUNDSTOCK: May I ask some
23 questions?

24 HEARING OFFICER FAY: Yes.

25 //

1 CROSS-EXAMINATION

2 BY MR. MUNDSTOCK:

3 Q You are familiar with the water
4 condition of certification number 1, are you not?

5 A The original one?

6 Q The original and as amended?

7 A Yes.

8 Q And is it a correct statement that it
9 says the owner/operator shall not pump or
10 otherwise utilize groundwater in the Rio Linda
11 Water District service area, unquote?

12 A Rather than to respond to that
13 statement, counsel, since I don't have it in front
14 of me, I think the Energy Commission's order is a
15 matter of public record and the document speaks
16 for itself.

17 Q But you agree that what you are now
18 proposing conflicts with this condition?

19 A Oh, absolutely.

20 Q So you're going to argue some kind of
21 changed circumstances since the original
22 certification?

23 A Argue. I'd prefer not to use that word
24 argue. My viewpoint, as set forth in our 25-page
25 submittal, was that conditions have changed

1 dramatically since the original decision by this
2 Commission in the granting of the permits for the
3 project.

4 Q Okay, so you will be seeking a change to
5 that condition of certification?

6 A Yes, as we move forward we have to.

7 Q Which would be a major change?

8 A Well, it would be -- you can use the
9 terminology that you would like to use. My thing
10 would be it would be a change from the original
11 certification for the project.

12 Q A controversial change?

13 A No.

14 Q No. Are you familiar --

15 A In fact, and let me expand on that since
16 I've responded to that. This matter has been
17 brought to the Rio Linda/Elverta Community Water
18 District board of directors twice. The will serve
19 letter that was provided to the Energy Commission
20 was a matter of public hearing at Rio Linda.

21 There was no controversy at all at the
22 Rio Linda/Elverta Community Water District for the
23 granting of that conditional will serve letter.
24 Which is a dramatic change from where we were
25 roughly eight years ago when this project started

1 down the line.

2 Q Yes. At the time do you recall the
3 opponents of the original project ran for election
4 to the Rio Linda Water Board?

5 A Yeah, but I find that irrelevant.

6 Q Is it irrelevant that one or more
7 intervenors opposed to the project are the names
8 listed as directors of the Rio Linda Water Board?

9 A Well, yeah, and actually that's what I
10 find to be fascinating is that one of the
11 intervenors, Mr. Jay O'Brien, now sits as the
12 board president for Rio Linda/Elverta Community
13 Water District; was aware of our conditional will
14 serve letter going out. And the board of
15 directors expressed no hesitation in sending that
16 letter out or having staff send that letter out.

17 Q So you believe that Mr. O'Brien was an
18 intervenor opposed to the project?

19 A Yes, he was.

20 Q And Mr. Wickham?

21 A Yes, he was, as well.

22 Q So the president and vice president of
23 the board are intervenors who are opposed to this
24 project?

25 A No, no --

1 MR. GRATTAN: Counsel, we're --

2 MR. O'LAUGHLIN: No --

3 MR. GRATTAN: All right, answer it
4 anyway.

5 MR. O'LAUGHLIN: I think the way to put
6 it is that originally Mr. O'Brien and Mr. Wickham,
7 as citizens of Rio Linda, were opposed to the
8 project.

9 What opinions Mr. Wickham and Mr.
10 O'Brien have as citizens is irrelevant to their
11 viewpoints as directors of the Rio Linda/Elverta
12 Community Water District, which is what I'm trying
13 to testify about here today, which is that they
14 know of the conditional will serve letter, they
15 support the conditional will serve letter. And
16 they did not direct staff to do otherwise.

17 BY MR. MUNDSTOCK:

18 Q Are you saying that you believe they
19 have changed their minds?

20 MR. GRATTAN: Objection. Objection.
21 This -- what is in the minds of a couple of
22 intervenors, I don't think this Commission or this
23 witness ought to be speculating on.

24 MR. MUNDSTOCK: Well, let me ask if --

25 MR. GRATTAN: I think he's answered the

1 question about the Rio Linda Water District and
2 what the vote and what the sentiment was of the
3 Rio Linda Water District, including those two
4 gentlemen that you mentioned.

5 HEARING OFFICER FAY: I think unless the
6 gentlemen in question have put on the record, the
7 public record, the contrast, apparent contrast in
8 their points of view, then I will sustain the
9 objection. Have they put that on the record, Mr.
10 O'Laughlin?

11 MR. O'LAUGHLIN: No. I don't understand
12 this line of questioning, I find it irrelevant.

13 As you all know, and I'll expound on
14 this a little bit for just a second, boards of
15 directors are comprised of individuals. Those
16 individuals may have their own viewpoints
17 politically outside of their jobs as directors of
18 the water district.

19 However, as the president and vice
20 president of the water district, both gentlemen
21 were informed by staff of the conditional will
22 serve letter. It was on the agenda. They
23 directed the management to take the action that
24 Mr. Phelan did, and that letter went out with the
25 board's full knowledge that it was going out.

1 Now, what viewpoints Mr. Wickham and Mr.
2 O'Brien have outside regarding this project, its
3 viability, its desirability or anything else, I
4 can't comment on it. I know nothing.

5 HEARING OFFICER FAY: Thank you.
6 Anything further, Mr. Mundstock?

7 MR. MUNDSTOCK: Yes.

8 BY MR. MUNDSTOCK:

9 Q The conditional will serve letter is not
10 a contract to provide water to the ethanol plant,
11 is it?

12 A Yes, it is. It's conditional.

13 Q Is it a contract?

14 A Yeah, it's a conditional contract that
15 if the way that those letters are sent out, and
16 the way that I view them when I send them out, and
17 the way that they're viewed in the industry is
18 that those are what are called conditions
19 precedent. If those conditions precedent are met,
20 then water will be supplied.

21 See, the problem here, it's one of these
22 difficulties unfortunately for developers, is what
23 comes first, the cart or the horse. And
24 developers can't go forward with projects without
25 having an assurance from water districts that a

1 supply of water will be available.

2 So you can imagine you don't want to
3 invest millions of dollars in design engineering,
4 environmental review, and going forward with
5 projects unless you know there's an available
6 supply of water.

7 What that letter tells me, it tells
8 Arkenol, is that if you fulfill these conditions
9 precedent you will receive a supply of water from
10 Rio Linda/Elverta Community Water District.

11 Q For the ethanol plant?

12 A That letter is specifically for the
13 ethanol plant. And as I testified to earlier, in
14 my conversations with Mr. Phelan, in fact I feel
15 bad about this. If I thought this was going to be
16 a major issue I'll get a conditional will serve
17 letter and put it in the file by March 1st, as
18 well, for the power plant.

19 Q Are you familiar with the contracts that
20 were provided by the applicant during the
21 amendment process on SEPCO?

22 A Yes, I was, and still am. I was, at
23 that time, the attorney for Arkenol, SEPCO, SPI
24 and I helped draft the contract between Northridge
25 Water District and the petitioner in this matter,

1 as well as between the petitioner and Rio
2 Linda/Elverta Community Water District.

3 Q Those were signed water supply
4 contracts, as I recall. Is that also your memory?

5 A Those were contracts that if certain
6 conditions would be fulfilled that a water supply
7 would be made available to the project under those
8 terms and conditions.

9 Q You equate the two?

10 A Absolutely. In fact, if I was to do an
11 equation of the two, in my professional opinion
12 the conditional will serve letter by Rio
13 Linda/Elverta Community Water District is far more
14 certain than the two water supply contracts that
15 were entered into between SPI and Northridge Water
16 District.

17 As you will recollect, Mr. Mundstock,
18 there was a great deal of question in Mr.
19 O'Hagan's report as to whether or not a supply of
20 water would, in fact, be available from the
21 American River.

22 And as we've seen with the recent
23 controversies on the American River, that question
24 mark is still out there and it's still real.

25 Not only that, there was a question of

1 the ability of Northridge Water District not only
2 to obtain a supply from the American River, but
3 have the adequate backup with groundwater wells in
4 the Poker Flats area in order to meet back-up
5 demand.

6 So, in my mind there are far less
7 uncertainties in regards to the conditional will
8 serve letter from Rio Linda/Elverta Community
9 Water District than those two contracts.

10 Q This conditional will serve letter, it's
11 five conditions, you believe is a certainty or a
12 certain water supply?

13 A No. What I'm saying is that the
14 certainty is this. If the applicant performs the
15 five conditions contained within the letter, that
16 the water supply needed for the ethanol plant
17 listed in that specific letter will be made
18 available by Rio Linda/Elverta Community Water
19 District.

20 Q Which of these five conditions are
21 certain to be accomplished?

22 A Well, I have no way of forecasting what,
23 if anything, will be done in the future. So I
24 have no way of knowing which ones will be done.
25 My assumption is that if the Commission grants the

1 extension and the applicant moves forward with the
2 project that all five conditions will be met.

3 And they will pay for the cost of the
4 design and engineering. They will pay for the
5 construction. They will pay for the bonding.
6 That the appropriate CEQA documentation will
7 either be done by this Commission or by Rio
8 Linda/Elverta Community Water District.

9 So my expectation is that if the
10 extension is granted that all of them will be
11 done.

12 Q But would it be fair to say that --

13 PRESIDING MEMBER LAURIE: Mr. Mundstock,
14 let me interrupt. I can tell you what my
15 position's going to be on the will serve.

16 I consider a will serve to be an
17 obligation to supply. I consider a conditional
18 will serve to be exactly that. Some conditional
19 will serves will be adequate, some will not be.

20 As we've already discussed, we cannot
21 have an ambiguous conditional will serve, because
22 we need to have a specifically defined project so
23 that we can do an environmental analysis.

24 If we had this to serve the power plant
25 that would be an inadequate conditional will

1 serve, because it doesn't give us enough
2 specificity to allow us to do an environmental
3 document.

4 I think the applicant knows that. And
5 the applicant has admitted or acknowledged the
6 necessity of having the specificity of project
7 description available to us before we proceed to
8 do an environmental analysis.

9 And so I don't see any disagreement
10 among the parties at that point. And I don't know
11 what the date is between the parties that you're
12 seeking to pursue.

13 If you're arguing that this is not an
14 acceptable assurance of supply, we get the point.
15 But I don't think applicant is arguing that point.
16 At least I would encourage them not to.

17 HEARING OFFICER FAY: Let's go off the
18 record for a moment.

19 (Off the record.)

20 HEARING OFFICER FAY: Anything further,
21 Mr. Mundstock, of this witness?

22 MR. MUNDSTOCK: Not on this subject.

23 HEARING OFFICER FAY: Okay. Anything
24 further, Mr. Grattan?

25 MR. GRATTAN: Nothing evidentiary.

1 HEARING OFFICER FAY: Okay.

2 MR. GRATTAN: If we can each sum up.

3 HEARING OFFICER FAY: What I would like
4 to do then, at this point, is go through the seven
5 elements that staff recommended in its elements
6 for a showing of good cause that staff recommended
7 in its June 25, 1999 filing, and that we examined
8 and discussed at the last hearing on this matter.

9 And I would like to take them one at a
10 time and ask the applicant to briefly address,
11 summarize the matters, and staff to respond. Is
12 there any comment before we get into that?

13 Okay, I will review them just briefly.
14 They are, first, that there are substantial
15 changes in circumstances since the certification
16 which justify the extension.

17 Second, that the request for the
18 extension is based on information that was not
19 available to the parties prior to the original
20 certification.

21 Third, that there is benefit to the
22 public in granting the extension, as well as to
23 the applicant.

24 Fourth, that the extension does not
25 result in fundamental or substantial changes to

1 the project description, particularly changes that
2 would have prevented certification originally.

3 Next, that the requested time for
4 certification is reasonable, time of extension is
5 reasonable.

6 Next, that the project will remain in
7 compliance with applicable LORS.

8 And finally, that the extension will not
9 result in a significant environmental impact.

10 We don't need to belabor these points if
11 they are not particularly relevant at this time,
12 for various reasons, just briefly explain that.
13 But I think these are reasonable criteria that
14 will assist the Committee and we need to hear from
15 the parties on these.

16 Mr. Grattan.

17 MR. GRATTAN: I don't believe that the
18 Committee has adopted the staff recommendation.
19 And the applicant did have, as you can imagine, a
20 simpler test. I think that we can -- obviously we
21 will proceed along those lines, but there is one
22 element of the staff's test with which we
23 disagree.

24 HEARING OFFICER FAY: Why don't you
25 state your disagreement at this time so we have

1 that in mind.

2 MR. GRATTAN: Okay. And that
3 disagreement is with the supposition that -- I
4 think it's number four, that there will be no
5 fundamental changes to the project which would
6 have prevented it's original certification, or
7 certification of the original project.

8 Obviously in the original project there
9 is a condition which forbids the use of
10 groundwater. Staff and applicant have
11 acknowledged that. We are proposing to use
12 groundwater. We believe that the circumstances
13 have changed since that initial provision was put
14 in the license, and we believe that an
15 environmental review will show that it would not
16 cause a significant impact.

17 HEARING OFFICER FAY: Okay. Keeping
18 that in mind, then, why don't we go ahead.

19 In your view, in the applicant's view
20 are there substantial changes in circumstances
21 since certification which would justify the
22 extension?

23 MR. GRATTAN: Yes, clearly there are
24 changes in circumstances. There was the SMUD
25 lawsuit and there was also the whole deregulation

1 of electricity in California.

2 HEARING OFFICER FAY: And it's your
3 position that these delayed the SEPCO project?

4 MR. GRATTAN: Yes. That was in our
5 initial petition.

6 HEARING OFFICER FAY: Staff, any
7 response?

8 MR. MUNDSTOCK: Yes. I believe the
9 Committee is entitled to the facts of this case.
10 This was a SMUD power plant. SMUD, prior to
11 certification, dropped its own proposal for a
12 cogeneration facility and modified its contract to
13 provide for a stand-alone power plant.

14 Those modifications were made prior to
15 certification, so that SMUD proceeded with this
16 project having no intention to build the project
17 that was being licensed. And immediately filed a
18 petition with this Commission -- had a petition
19 filed to build a stand-alone power plant.

20 And all of those changes in
21 circumstances were prior to certification. And
22 those changes, SMUD's unwillingness to build the
23 project it originally proposed, known to all the
24 applicant's parties, but not known to the staff or
25 to the Committee has led to each of the subsequent

1 problems. And specifically to the fact that there
2 is no power plant applicant before you now,
3 because SMUD has never been replaced as the power
4 plant applicant.

5 There's been no applicant for this
6 cogeneration plant since SMUD concluded prior to
7 certification that it did not want to build a
8 cogeneration plant.

9 And that is all in the record, and I
10 think the Committee should be aware of it, because
11 it can all be proven.

12 HEARING OFFICER FAY: But you're saying
13 that the record was not informed at the time of
14 the certification?

15 MR. MUNDSTOCK: Only when -- when
16 certification was finished the first thing that
17 happened is they came in, the applicants came in
18 with a petition to build a stand-alone power
19 plant, because SMUD concluded that its
20 cogeneration facility should not be dependent upon
21 the ethanol plant, since the ethanol plant was too
22 uncertain. Uncertain as to construction;
23 uncertain as to whether it would stay; and
24 uncertain in the regulatory structure.

25 So they had the contract amended with

1 the ethanol applicant to provide for the licensing
2 of a stand-alone power plant. That's what was
3 proposed. That amendment got a very bad response
4 from the Commissioners, sitting then where you sit
5 now, because the applicant had licensed a
6 cogeneration plant.

7 And thus SMUD never got the amendment
8 for a stand-alone power plant, they got a few
9 modifications, but they required the ethanol plant
10 to still be built and to operate.

11 At that point SMUD terminated --

12 HEARING OFFICER FAY: So this did not --

13 MR. MUNDSTOCK: -- the project because
14 they could not get what they wanted. SMUD
15 actually abandoned their own power plant, which is
16 why this applicant has had no power plant
17 developer since that time.

18 HEARING OFFICER FAY: Okay, Mr.

19 Mundstock, --

20 MR. GRATTAN: This is all very
21 interesting and somewhat mischaracterized history,
22 but this is not very relevant to whether there
23 have been changed circumstances.

24 Are you going to deny that deregulation
25 has taken place? Are you going to deny that there

1 was a lawsuit between the applicant and SMUD well
2 after certification? Come on, Dave.

3 HEARING OFFICER FAY: I think Mr.
4 Grattan has covered it in mentioning the lawsuit.
5 Clearly there was a conflict. You've articulate a
6 lot of detail, but we don't need to get into that.

7 The next question is request for
8 extension is based on information which was not
9 available to the parties prior to the original
10 certification. I suppose you've covered much of
11 that in your previous statements.

12 MR. GRATTAN: I think that is covered,
13 and we'll stand on what we said on the first --

14 HEARING OFFICER FAY: Anything further,
15 Mr. Mundstock?

16 MR. MUNDSTOCK: I will stand on my
17 statements.

18 HEARING OFFICER FAY: Okay. The third
19 is that there is benefit to the public in granting
20 the extension, as well as benefit to the
21 applicant.

22 How does this benefit the public, Mr.
23 Grattan?

24 MR. GRATTAN: Yes, we think it would
25 benefit the public in many ways, starting with the

1 fact that there has been predicted a power
2 shortage, which should peak in the summer of 2001.

3 We'd also note that the applicant has
4 committed to a substantial public benefits
5 program, has offered a substantial public benefits
6 program to the community, including local
7 preference, including sums of money, both
8 beginning with construction and annually.

9 The power plant will provide needed
10 power, will provide local jobs, will provide
11 voltage support, this is all documented in the
12 record.

13 And in addition, the applicant has
14 volunteered substantial community benefits
15 project -- community benefits program, including a
16 local role in the plant's operation.

17 Water counsel tells me also that the Rio
18 Linda Community Water District will benefit, as
19 well, because of the infrastructure improvements
20 which will result from this project.

21 HEARING OFFICER FAY: These improvements
22 will offer assistance beyond the needs of the
23 power project, is that what you're saying?
24 They'll help the community at large, as well?

25 MR. O'LAUGHLIN: Yes. And in fact, the

1 systems, when it's installed, has a redundancy
2 which will provide water not only to the
3 facilities, as well, but backup to the facilities
4 within Rio Linda, as well as maintaining fire
5 protection and so forth and so on. As well as
6 within Rio Linda, a benefit to the service within
7 Rio Linda based on the estimates that we were
8 provided to Rio Linda/Elverta Community Water
9 District on rates and structures for the
10 facilities on their capital improvements within
11 Rio Linda/Elverta Community Water District. And
12 the financing of those pursuant to charges made to
13 the ethanol plant.

14 HEARING OFFICER FAY: Okay. Does staff
15 have a response in terms of benefits to the public
16 versus --

17 MR. MUNDSTOCK: Yes. Without an
18 adequate project description it is entirely
19 speculative as to what benefits this project would
20 provide. Without a zoning agreement from the
21 County of Sacramento, a current one to replace the
22 existing one, there's no information as to any of
23 the benefits previously indicated as to whether
24 they would continue.

25 So that lacking the current zoning

1 agreement with Sacramento County for the ethanol
2 plant there is really no way of knowing what
3 benefits the project is proposing.

4 HEARING OFFICER FAY: But is this
5 something that could be resolved by April based on
6 the statements that you've heard from the
7 petitioner today?

8 MR. MUNDSTOCK: Impossible to say
9 because it is entirely unclear what the status is
10 of the applicant's proposals for the ethanol
11 plant, which is where the benefits -- the benefits
12 were negotiated originally between the applicant
13 and the county. And they related to the ethanol
14 plant.

15 MR. GRATTAN: I would submit that I left
16 the ethanol plant benefits out of this. I thought
17 we were focusing on the power plant. The power
18 plant certainly brings benefits. The ethanol
19 plant with the power plant brings special
20 benefits.

21 I haven't even mentioned property tax.
22 But the ethanol plant, you know, as we know bring
23 special air quality benefits and special benefits
24 in responding to what appears to be a new need for
25 ethanol in California.

1 HEARING OFFICER FAY: Okay. Extension
2 does not result in fundamental or substantial
3 changes to the project description, particularly
4 changes that would have prevented certification
5 originally.

6 Now, you've spoken to the prohibition on
7 groundwater pumping, and you believe you can
8 address that and satisfy the Commission that that
9 concern should be changed?

10 MR. GRATTAN: Yes, and again, the issue
11 is not the mere language of the condition
12 prohibiting groundwater, the issue is the impacts
13 of using groundwater. And we would hope to
14 address these to the satisfaction of the
15 Committee.

16 HEARING OFFICER FAY: Is it your
17 position that there was not a thorough analysis of
18 groundwater pumping originally? It sounded like
19 staff --

20 MR. GRATTAN: I'm going to turn --

21 HEARING OFFICER FAY: -- found that --

22 MR. GRATTAN: -- this one over --

23 HEARING OFFICER FAY: All right.

24 MR. GRATTAN: -- to the guy who answers
25 the hard questions here on water.

1 MR. O'LAUGHLIN: I'll be very blunt,
2 since I'm still under oath. I think the analysis
3 was adequate. I think the interpretation of the
4 data was incorrect.

5 The Montgomery Watson analysis that we
6 provided to the Commission pretty well showed that
7 there would be minimal impacts within the area
8 where groundwater would be pumped, in and around
9 the Poker Lane wells, which was where we were
10 going to get groundwater from, from Northridge
11 Water District.

12 We've got to go back in time and Mr.
13 Mundstock is well aware of this, one of the -- and
14 staff is, as well. One of the main areas of
15 concern within Rio Linda when the project
16 initially started was that by pumping groundwater
17 within Rio Linda you would de-water shallow
18 groundwater wells in and around the plant site.

19 What happened is that I think between
20 the data provided in between the public outcry and
21 concern regarding groundwater impacts, that the
22 project applicant was forced to go look for water
23 that didn't create a controversy. And that's
24 exactly what they did. And went to surface water
25 since there would be no impacts within Rio Linda

1 in regards to shallow groundwater wells.

2 HEARING OFFICER FAY: Okay, thank you.

3 So that may be an issue if the case proceeds, if
4 staff maintains their original position.

5 Are there other substantial changes in
6 your proposal/modification request that might have
7 prevented certification originally?

8 MR. O'LAUGHLIN: We don't believe so.

9 HEARING OFFICER FAY: Okay. Staff?

10 MR. MUNDSTOCK: The applicant's witness
11 testified under oath they essentially don't have a
12 project description at this time. Since they have
13 no project description it is impossible to know
14 what the ultimate changes would be if they find a
15 new applicant for the power plant.

16 So this question cannot be answered at
17 the current time. We know that water will be a
18 contested issue because they are proposing
19 something that would never have been certified
20 originally, namely the use of groundwater.

21 And the Committee should always keep in
22 mind that if they find a power plant applicant who
23 makes any number of changes, those changes could
24 have prevented initial certification. We don't
25 know what they are yet, because we don't have a

1 power plant applicant.

2 And the most significant change may
3 simply be the capacity. That if the power plant
4 applicant chooses not to build what is now a ten-
5 year-old SMUD facility, if they add to the
6 capacity by 50 megawatts, then there's a new AFC
7 automatically, and the applicant agrees with that.

8 MR. GRATTAN: Well, I would --

9 MR. MUNDSTOCK: Everything is
10 entirely -- everything involving D is either an
11 answer of no on water, or speculative at this
12 time.

13 MR. GRATTAN: I think number one, that
14 should there be a change in capacity the plant
15 will be governed by existing law. If it's above
16 100 megawatts it's an AFC. If it's above 50 it's
17 a small power plant exemption. That's Commission
18 policy. There's no way to get around that.

19 Number two, again I have to state the
20 applicant's disagreement with this very artificial
21 criteria that the staff has put in, that anything
22 that would change a condition would have prevented
23 certification initially. The world changes, the
24 environmental circumstances changes. The degree
25 of data changes. The degree with which we are

1 comfortable with data changes.

2 HEARING OFFICER FAY: Okay.

3 MR. ELLER: Mr. Grattan, I'd like to go
4 back to the issue of public benefits and in your
5 comments --

6 MR. GRATTAN: Yes.

7 MR. ELLER: -- you indicated that the
8 power plant would benefit the area by adding power
9 because there's a shortage expected in 2001.

10 I'd like to look at your petition for
11 extension on page 313. You indicate that the
12 ethanol citric acid facility will be on line or
13 constructed and completed in November of 2001, is
14 that correct?

15 MR. GRATTAN: I believe if we said it,
16 that's -- you've got the document in front of you.

17 MR. ELLER: And you're also indicating
18 that the power plant facility will be constructed
19 and completed by January 2003?

20 MR. GRATTAN: Okay.

21 MR. ELLER: Does the ethanol facility
22 expect to run as you, I think, indicate also in
23 the description 330 days a year, 24 hours a day?

24 MR. GRATTAN: Yes.

25 MR. ELLER: That would include summer

1 operation?

2 MR. GRATTAN: Yes.

3 MR. ELLER: So, in fact, that project
4 will exacerbate the shortage in the summer of
5 2002?

6 MR. GRATTAN: It uses almost no
7 electricity.

8 MR. ELLER: Can you tell me --

9 MR. GRATTAN: The boiler provides steam.

10 MR. ELLER: Okay. How much electricity
11 is used by that facility? Can you give me a rough
12 number?

13 HEARING OFFICER FAY: Why don't we have
14 Ms. Sumait --

15 MR. GRATTAN: About 4 megawatts.

16 MR. ELLER: Thank you.

17 HEARING OFFICER FAY: Okay.

18 PRESIDING MEMBER LAURIE: Mr. Fay, let
19 me interrupt a second. I have a short noon
20 meeting. I'd like to ask, in anticipation of how
21 long we expect this hearing to do, to know whether
22 or not we should take a break or whether I should
23 postpone the meeting -- let me initially jump in.

24 I've got three more questions as to good
25 cause, and then I believe Mr. Grattan wanted to do

1 a summary, did you?

2 MR. GRATTAN: I'll do a 15-second
3 summary.

4 PRESIDING MEMBER LAURIE: Oh, all right.

5 MR. GRATTAN: Very briefly.

6 PRESIDING MEMBER LAURIE: Staff, what --

7 MR. MUNDSTOCK: Another brief summary.

8 PRESIDING MEMBER LAURIE: Then let's
9 just go ahead and proceed.

10 HEARING OFFICER FAY: Okay. Then the
11 next question is requested time for certification
12 extension is reasonable. And I'd like you to
13 address that, Mr. Grattan, especially in light of
14 the delays that we've had to date, and the dates
15 that you show the ethanol facility beginning
16 construction June of this year, and the power
17 plant beginning construction June of next year.

18 Is the three-year request still valid?

19 MR. GRATTAN: Yes. We were a bit
20 optimistic in what we thought would take, the time
21 it would take to bring in a financing partner for
22 the power plant.

23 If we can't do that and provide the
24 information that this Committee needs to proceed
25 with the power plant after March 31st you won't

1 see us.

2 HEARING OFFICER FAY: So you're
3 comfortable asking the Committee to rely on March
4 31st as a deadline to answer some of these
5 uncertainties?

6 MR. GRATTAN: Yes, and I'll -- if Neco
7 Sumait wants to address that.

8 MS. SUMAIT: Yes, we are.

9 HEARING OFFICER FAY: All right. What
10 we're trying to get through, these are all
11 elements of the good cause showing. And if things
12 are terribly open-ended, that makes it harder to
13 find good cause.

14 But you're saying you would be able to
15 provide the Committee with an answer by March
16 31st?

17 MR. GRATTAN: That's correct.

18 HEARING OFFICER FAY: Okay. Staff, is
19 the requested time that they filed for reasonable.
20 They wanted a three-year extension from the time -
21 -

22 MR. MUNDSTOCK: The request --

23 HEARING OFFICER FAY: -- Commission
24 grants --

25 MR. MUNDSTOCK: -- being contemplated is

1 their request for suspension until March 31st, is
2 that the question?

3 HEARING OFFICER FAY: No. That's not
4 what I was asking. Just the original request for
5 the three-year extension from the time granted by
6 the Commission, so that does --

7 MR. MUNDSTOCK: Well, since --

8 HEARING OFFICER FAY: -- taken in the
9 big picture --

10 MR. MUNDSTOCK: -- since they don't have
11 a power plant applicant, or power plant project
12 before you there is no evidence that any schedule
13 is reasonable.

14 Regarding the extension to March 31st, I
15 think the Committee should be reminded that in
16 their original filing dated April 19, 1999, here's
17 what they said about trying to obtain a power
18 plant applicant.

19 Quote, "We are in discussions with three
20 interested parties currently conducting their
21 evaluation of the SPI opportunity. We hope that
22 their efforts will be concluded in the next couple
23 of months." Unquote.

24 So they were looking for a power plant
25 applicant back in April of 1999, and trying to

1 find one. And now we are in January of 2000 and
2 they are still looking for a power plant
3 applicant.

4 So I think --

5 MR. GRATTAN: I have to state that what
6 we are looking for is a financing partner. We are
7 the power plant, we are the holder of the power
8 plant license. SPI, Sacramento Power,
9 Incorporated, is the holder of the power plant
10 license. It was transferred from SMUD to SPI.

11 And now we're down to one financing
12 partner with whom we're seriously negotiating and
13 have at least the terms sheets on.

14 HEARING OFFICER FAY: Okay. The next
15 question, the project will remain in compliance
16 with LORS. Can you commit to that?

17 MR. GRATTAN: Yes, we wouldn't be
18 proposing a plant that wouldn't commit to LORS.

19 HEARING OFFICER FAY: All right. Staff,
20 any response?

21 MR. MUNDSTOCK: Again, it's premature to
22 know without a project description.

23 HEARING OFFICER FAY: Okay. And will
24 not result in significant environmental impacts.
25 I presume you'd commit to that, as well?

1 MR. GRATTAN: We would -- the project we
2 would propose, we would commit that it wouldn't
3 result in a significant environmental impact. I
4 question whether the Committee might want to bind
5 itself to that in every circumstance of an
6 extension.

7 That's what environmental review and
8 that's what findings of override are for. But
9 this plant, we are confident, will not have
10 significant environmental impact. But that's for
11 the Committee to determine.

12 HEARING OFFICER FAY: And the staff
13 equally uncertain about that because of the
14 description?

15 MR. MUNDSTOCK: I'm sure we can agree on
16 complete uncertainty.

17 HEARING OFFICER FAY: All right. Thank
18 you. That goes through all the elements, and
19 we've noted your objection to element D about
20 fundamental changes. But you've described that
21 it's limited, I think, to the groundwater
22 question, is that correct?

23 MR. GRATTAN: Correct.

24 HEARING OFFICER FAY: All right. Do you
25 have any closing --

1 PRESIDING MEMBER LAURIE: I would note,
2 Mr. Fay, however that the Committee has not
3 adopted this criteria as that criteria which we're
4 going to necessarily utilize for a finding of good
5 cause.

6 It's appropriate that the criteria be
7 discussed, the Committee has not, as yet, adopted
8 same.

9 HEARING OFFICER FAY: Point well taken.
10 Any closing arguments, Mr. Grattan?

11 MR. GRATTAN: I'll make this very brief.
12 We regret that it has taken this amount of time to
13 get our specifics together. They're not together
14 yet. If you give us until March 31st we will come
15 up with the required information for the
16 Committee. And we will have a strong partner with
17 us.

18 If we don't, this is the last bite of
19 the apple. We thank the Committee for its
20 patience and actually we thank staff for its
21 patience. Staff has been -- we see things a bit
22 differently now, but staff has been reasonable and
23 cooperative and outgoing throughout this process.

24 HEARING OFFICER FAY: Okay. Anything
25 further, Mr. Mundstock?

1 MR. MUNDSTOCK: Yes. Staff and the
2 Energy Commission are overwhelmed by a voluminous
3 number of applications for certification for
4 real --

5 PRESIDING MEMBER LAURIE: Mr. Mundstock,
6 I consider that irrelevant. Our staffing problem
7 I do not consider to be any applicant's problems,
8 that's our problems. So, I would ask argument to
9 be made regarding the propriety of this project,
10 not in consideration of our own internal problems.

11 MR. MUNDSTOCK: Staff's position is that
12 staff time should be spent analyzing real projects
13 where sufficient information is provided so we are
14 capable of conducting an analysis.

15 Otherwise we are wasting staff's time.
16 We do not want to waste staff time on this project
17 until and unless it becomes real. We do not
18 consider it to be real at this time. It was not
19 real when the extension was filed. We don't know
20 when, if ever, it will become real.

21 So, it's a matter then of how much
22 patience and how much latitude does one provide
23 with an applicant who does not have a real
24 project, but hopes to have one.

25 In balancing that, the staff's view is

1 it would now be in the best interests of everyone
2 to simply get rid of the antiquated license that
3 we now have before us that will cause far more
4 trouble than it is worth. And if there is a real
5 AFC to come forward, let it emerge as a real AFC,
6 and be handled in accordance with the present
7 project proposal to be made, the present
8 environmental analysis based upon the new
9 proposal, present LORS and whatever changes are
10 made.

11 That the honest AFC that can be reviewed
12 normally is far superior as an option for both the
13 Commission and staff, than the process we are
14 going through, which is essentially taking an
15 archaic license that was granted six years ago,
16 and trying to pretend that it can be revived from
17 the dead. When, in reality, SMUD killed this
18 project in 1994.

19 And it should be finally acknowledged as
20 dead and the Committee should bury it.

21 PRESIDING MEMBER LAURIE: Just a
22 comment. First of all, Mr. Eller, on behalf of
23 Commissioner Rohy, did you have any comment?

24 MR. ELLER: Nothing further.

25 PRESIDING MEMBER LAURIE: This is a

1 matter of first impression for the Commission.

2 And I want to make sure that any precedent set is
3 a rational one.

4 You have not presented us with a clean
5 application, and I think you understand that. We
6 should not, on a request for extension there
7 should be no debate as to the project description.
8 We should know what the description is, because
9 the description of the project is as presented in
10 the application that is sought to be extended.

11 I think you have advised us that it is
12 your intent to modify that. Any applicant is
13 always free to seek modification of their
14 application.

15 What you have done, however, is to, in
16 order to insure that the project survives
17 statutorily, you have filed the extension while
18 you are seeking to determine what the nature of
19 your modification should be.

20 I am not suggesting that is unethical or
21 immoral or illegal. The question is to what
22 extent are we willing to live with that. And what
23 is in the best interests of our process and the
24 entirety of the siting process, and ultimately the
25 people that we represent.

1 So that will be our consideration. And
2 that's all I have, Mr. Fay. The matter will be
3 taken under submission.

4 HEARING OFFICER FAY: Right. I think
5 the parties can anticipate the Committee will
6 issue a determination in the near future
7 indicating what its plans are.

8 MR. GRATTAN: Thank you.

9 HEARING OFFICER FAY: Thank you, all.

10 (Pause.)

11 HEARING OFFICER FAY: I'm sorry, we have
12 to go back on the record. I believe there's a few
13 members of the public here, are there? And, Mr.
14 Chaddock, I'm sorry, I had a card for you and I
15 overlooked it. Please come forward, we'd like to
16 hear from you.

17 MR. CHADDOCK: My name is Chris
18 Chaddock. I had a couple questions that could be
19 regarded into their application for an extension.

20 One could relate to the water expert we
21 have here. The way I understand it, Rio Linda
22 Water District can't give them a positive say
23 whether they can give the SEPCO plant water or not
24 because they had to do an analysis whether it
25 would deplete the groundwater in such an area.

1 And under state standards they'd be
2 required to bring in surface water to replace the
3 depleted water that the plant would be using. And
4 this would be coming from the Northridge Water
5 District, which I think this attorney was possibly
6 part of, a condition where Rio Linda and
7 Northridge were in a joint agreement to bring in
8 surface water to the Rio Linda area.

9 But since then they have changed their
10 agreement, or requested to back out of accepting
11 any surface water from the Northridge Water
12 District.

13 And that would be one of the conditions
14 that they would be able to supply water to the
15 SEPCO plant.

16 Two, as far as the air quality being an
17 issue with environmental --

18 HEARING OFFICER FAY: Before we move on,
19 was that first one a question?

20 MR. CHADDOCK: Yes. That was, yeah, one
21 question to the water expert here.

22 HEARING OFFICER FAY: Okay, could we get
23 a response?

24 MR. O'LAUGHLIN: I hate to say this --

25 HEARING OFFICER FAY: Do you have it in

1 mind?

2 MR. O'LAUGHLIN: No, I don't have
3 something in mind. I was uncertain whether it was
4 a question or a statement, so I paid somewhat of
5 attention, but there were substantive add-on
6 clauses --

7 HEARING OFFICER FAY: Yeah, it was a
8 long --

9 MR. O'LAUGHLIN: -- I didn't know which
10 one I'm supposed to respond to.

11 HEARING OFFICER FAY: Yes, it was very
12 long. Mr. Chaddock, can you --

13 MR. CHADDOCK: Okay, I'll be more
14 specific.

15 HEARING OFFICER FAY: -- reduce it and
16 be specific?

17 MR. CHADDOCK: Yeah. In your extension
18 to the March timeframe that they're asking to have
19 their extension, would Rio Linda Water District be
20 able to come up with a study showing just cause
21 for bringing in surface water to replace the
22 groundwater that they're going to be asked, and
23 get a permit from state agencies?

24 MR. O'LAUGHLIN: At the present time,
25 based on the work done by Camp, Dresser and McKee,

1 we believe that no surface water mitigation will
2 be required in Rio Linda.

3 Secondly, there is no requirement that
4 we get a permit from the State of California,
5 either from the state, itself, or the State Water
6 Resources Control Board, to pump groundwater in
7 Rio Linda and deliver it to the project.

8 So, I hope that's responsive to your
9 question.

10 MR. CHADDOCK: I think it is. Maybe you
11 could correct me, I was under the impression that
12 if an entity as a water district depletes a
13 groundwater supply to a significant amount that
14 would affect the surrounding groundwater wells of
15 neighbors, that they need to replace that water.

16 MR. O'LAUGHLIN: No, that's not correct,
17 unfortunately, under California law. Under
18 California law, a water district is an
19 appropriator of groundwater and has the ability to
20 pump as much groundwater as it wishes to.

21 Only within the State of California when
22 there are critical over-drafts and adjudication is
23 there a determination as to mitigation. Or if a
24 private individual was to bring an action for
25 injunctive relief or interference with their

1 property interests.

2 But I think the question that you're
3 really asking isn't that legal question. I think
4 the question is as part of the CEQA process
5 whether or not if there is a significant
6 environmental impact by Rio Linda/Elverta
7 Community Water District pumping this groundwater,
8 that impact would have to be identified and the
9 mitigation, if there is any, for that impact would
10 have to be addressed.

11 And then whether or not there would be a
12 statement of overriding consideration about also
13 be addressed.

14 But that's part of a CEQA analysis,
15 rather than a regulatory requirement by the State
16 Water Resources Control Board.

17 HEARING OFFICER FAY: I think a short
18 answer there is that this is something that the
19 Commission would look at if they do extend the
20 license or the -- in the process of determining
21 whether the permit should be extended.

22 And if no significant impacts were
23 found, there probably would be no mitigation
24 required.

25 MR. CHADDOCK: Resort back to a question

1 I asked the applicant here about silica release
2 into the atmosphere being part of their product.
3 And they stated to me that the way they were going
4 to be processing this, that once they burned the
5 rice straw that there would not be any release.

6 MR. GRATTAN: We don't burn the rice
7 straw.

8 MR. CHADDOCK: Right.

9 MR. GRATTAN: We don't burn the rice
10 straw.

11 MR. CHADDOCK: That's what you're saying
12 before, and I have been under the impression that
13 the grinding process of the rice straw was going
14 to be an open-air process of grinding to
15 extract -- to make it a form to be acceptable into
16 the plant for the transition into ethanol and
17 other products.

18 MS. SUMAIT: I believe it's an enclosed
19 grinder. Certainly we would --

20 HEARING OFFICER FAY: Nocy, you have to
21 speak right into the mike.

22 MS. SUMAIT: Sorry. Certainly we would
23 have to adhere to particulates requirement. It's
24 an enclosed type grinder, because we're concerned
25 obviously about reducing the particulates that

1 would come off from the grinding. It would have a
2 bag house. And if you need more specific
3 information, you know, I would be more than happy
4 to provide that to you.

5 MR. CHADDOCK: My information states
6 different.

7 Thank you.

8 MS. SUMAIT: I could provide, you know,
9 like I said, I could provide you with --

10 HEARING OFFICER FAY: And, Mr. Chaddock,
11 today we're here to really consider the idea of
12 extending the license and not necessarily to get
13 the specifics on the environmental impacts.

14 MR. CHADDOCK: The other thing in
15 request to your conditions, the Rio Linda/Elverta
16 Community Plan has changed drastically. Some of
17 the adjoining area -- heavily industrial M2 has
18 been changed to AR2, agricultural -- to
19 agricultural/residential, two per acre. And
20 that's at least 100 acres south of the plant. And
21 a large portion adjoining the plant to the east of
22 it has been rezoned to AR2, which I feel it makes
23 an impact to the surrounding area.

24 HEARING OFFICER FAY: And the staff, if
25 the Commission authorizes the staff to further

1 examine this and they get the information that
2 they need, that's one of the things that they
3 would be looking at, as well.

4 MR. CHADDOCK: Thank you. And one last
5 request. Under significant impact or
6 environmental impact, have they considered the RMP
7 or the OCA, the accidental release -- ACC,
8 accidental release plan of the Taylor Fertilizing
9 plant, which incorporates the site. If they would
10 have an accidental release of any of the numerous
11 serious chemicals that they have on site there.

12 Their ACC incorporates the site area for
13 the SEPCO plant, which could make major changes in
14 the way that they perform or are able to perform
15 any safety measures at their own plant.

16 HEARING OFFICER FAY: Well, if that's
17 the case, they'll have to deal with that in, you
18 know, revising their information that staff will
19 analyze.

20 You're saying that the emergency plan
21 includes the plant area?

22 MR. CHADDOCK: Yes, it does.

23 HEARING OFFICER FAY: All right.

24 MR. CHADDOCK: And I sort of felt that
25 these were part of the significant environmental

1 impact G on your request for extension.

2 HEARING OFFICER FAY: Oh, okay. All
3 right, thank you.

4 MR. CHADDOCK: Thank you for your time.

5 HEARING OFFICER FAY: We'll take the
6 comment in that light. Thank you.

7 Are there any other comments? Anybody
8 else from the public like to make a comment?

9 Okay, I see no indication.

10 All right, thank you, all.

11 MR. GRATTAN: Thank you.

12 MR. O'LAUGHLIN: Thank you.

13 (Whereupon, at 12:20 p.m., the hearing
14 was concluded.)

15 --o0o--

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I, DEBI BAKER, an Electronic Reporter,
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